

JUN 19 2001

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT. OF INSURANCE
BY

In the Matter of:) Docket No. 01A-164-INS
)
BANKERS UNITED LIFE ASSURANCE COMPANY,) **CONSENT ORDER**
NAIC #61387;)
)
Respondent.)
)

Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of Bankers United Life Assurance Company ("BULAC"). The Report of the Examination of the Market Conduct Affairs of BULAC dated May 23, 1996 alleges that BULAC has violated A.R.S. §§ 20-443, 20-444, 20-448.01, 20-461, 20-2110, A.A.C. R20-6-215, R20-6-801, R20-6-1007, and R20-6-1203.

BULAC wishes to resolve this matter without formal adjudicative proceedings, neither admits nor denies that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. BULAC is authorized to transact life and disability insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of BULAC. The on-site examination covered the time period from July 1, 1992 through June 30, 1995, and was concluded on May 23, 1996. Based on the findings the Examiners prepared the "Report of Examination of the Market Conduct Affairs of Bankers United Life Assurance Company" dated May 23, 1996.

3. BULAC distributed four policy forms (B126690, B121283, B135299, B123436) which stated, "Projected Policy Values, Cash Values, and Death Benefits

1 shown above and projected to the targeted paid-up date are not guarantees or
2 estimates but projections based on interest and mortality assumptions described
3 below." Mortality Assumptions in the illustration assumed no Monthly Cost of
4 Insurance in year 16 and thereafter. However, the description of Mortality Assumptions
5 on the illustration failed to disclose or describe the absence of a Monthly Cost of
6 Insurance.

7 4. The Examiners reviewed 65 of 384 Arizona life insurance applications
8 issued by the company during the time frame of the examination and found that
9 BULAC used an HIV-related test consent form that was not filed nor approved by the
10 Director.

11 5. The Examiners reviewed 5 of 5 Arizona life insurance replacement files,
12 which were included in the company's replacement register, and found as follows:

13 a. BULAC failed to send three existing insurers a *Notice Regarding*
14 *Replacement of Life Insurance* within three working days of the date the application
15 was received at its home or regional office, or the date the policy is issued, whichever
16 is sooner.

17 b. BULAC failed to present a copy of the *Notice Regarding Replacement*
18 *of Life Insurance* to one applicant at the time of taking the application.

19 6. The Examiners reviewed 15 of 26 life insurance applications either declined
20 or issued by the company during the time frame of the examination and found that
21 BULAC used an HIV-related test consent form that was not filed nor approved by the
22 Director.

23 7. The Examiners reviewed 66 of 208 long-term care insurance applications
24 declined by the company and found as follows:

25 a. BULAC failed to provide 30 applicants with a *Summary of Rights*.

1 b. BULAC failed to provide two applicants with the specific reason for the
2 adverse underwriting decision, or advise the person that upon written request the
3 person may receive the specific reason in writing.

4 8. The Examiners reviewed 101 of 204 individual long-term care insurance
5 policies issued by the company and found as follows:

6 a. BULAC issued 45 policies for long-term care insurance, where the
7 replacement question on the application was not answered.

8 b. BULAC failed to provide seven applicants with a *Notice Regarding*
9 *Replacement of Long Term Care Insurance*.

10 c. BULAC failed in 68 instances, to notify the existing insurer in writing,
11 of the proposed replacement within five working days of receipt of the application.

12 **CONCLUSIONS OF LAW**

13 1. BULAC violated A.R.S. § 20-443(1) by misrepresenting the benefits or
14 advantages of a life insurance policy.

15 2. BULAC violated A.R.S. § 20-444(A) by circulating sales brochures that
16 contain misleading and deceptive statements with respect to the business of insurance.

17 2. BULAC violated A.R.S. § 20-448.01(B) and A.A.C. R20-6-1203(C) by using
18 an HIV-related test consent form that was neither filed nor approved by the Director.

19 3. BULAC violated A.R.S. § 20-2110(A) by failing to give applicants for
20 insurance:

21 a. A specific reason for an adverse underwriting decision, and
22 notification that the specific reasons can be obtained upon written request.

23 b. *A Summary of Rights*.

24 4. BULAC violated A.A.C. R20-6-215(F)(3)(c) by failing to send existing
25 insurers a *Notice Regarding Replacement of Life Insurance* within three working days

1 of the date the application is received at its home or regional office, or the date the
2 policy is issued, whichever is sooner.

3 5. BULAC violated A.A.C. R20-6-215(F)(3)(c) by failing to present a copy of
4 the *Notice Regarding Replacement of Life Insurance* to applicants where replacement
5 is involved.

6 6. BULAC violated A.A.C. R20-6-1007(A) by issuing policies for long-term
7 care insurance that fail to include answers to all questions.

8 7. BULAC violated A.A.C. R20-6-1007(C) by failing to furnish applicants for
9 long term care insurance with a copy of the *Notice Regarding Replacement of Long*
10 *Term Care Insurance* where replacement of an existing policy was involved.

11 8. BULAC violated A.A.C. R20-6-1007(E) by failing to notify an existing long
12 term care insurer of replacement in writing within five working days from the date that
13 the application was received, or the date the policy was issued, whichever was sooner.

14 9. Grounds exist for the entry of the following Order, in accordance with A.R.S.
15 §§ 20-220, 20-456, 20-1691.07 and 20-2117.

16 **ORDER**

17 **IT IS ORDERED THAT:**

18 1. Bankers United Life Assurance Company shall:

19 a. Not misrepresent the benefits and advantages of a life insurance
20 policy.

21 b. Circulate advertising materials that contain no misleading and
22 deceptive statements with respect to the business of insurance.

23 c. Use an HIV-related test consent form that has been filed and
24 approved by the Director.

25 d. Provide applicants and insureds with a specific reason of an adverse

1 underwriting decision and notification that the specific reason can be obtained upon
2 written request.

3 e. Provide applicants with a *Summary of Rights*.

4 f. Send existing insurers a *Notice Regarding Replacement of Life*
5 *Insurance* within three working days of the date the application is received at its home
6 or regional office, or the date the policy is issued, whichever is sooner.

7 g. Process only the policy applications for long-term care insurance that
8 have answered all replacement questions.

9 h. Provide applicants for long-term care insurance with a *Notice*
10 *Regarding Replacement of Long Term Care Insurance*.

11 i. Notify existing insurers of replacement of existing long-term care
12 insurance within five working days from the date that the application is received by the
13 insurer or the date the policy is issued, whichever is sooner.

14 2. Within 90 days of the filed date of this Order, BULAC shall submit to the
15 Arizona Department of Insurance, for approval, evidence that the following corrections
16 have been implemented and communicated to the appropriate personnel, regarding
17 the issues outlined in Paragraph 1 of the Order section of this Consent Order.
18 Evidence of corrective action and communication thereof includes, but is not limited to,
19 memos, bulletins, E-mails, correspondence, procedures manuals, print screens, and
20 training materials.

21 3. The Department shall be permitted, through authorized representatives, to
22 verify that BULAC has complied with all provisions of this Order.

23 4. BULAC shall pay a civil penalty of \$8,000.00 to the Director for deposit in
24 the State General Fund in accordance with A.R.S. § 20-220(B). The civil penalty shall
25 be provided to the Market Conduct Examinations Section of the Department prior to the

1 filing of this Order.

2 5. The Report of Examination of the Market Conduct Affairs of BULAC as of
3 May 23, 1996, including the letter submitted in response to the Report of Examination,
4 shall be filed with the Department after the Director has filed this Order.

5 DATED at Phoenix, Arizona this 15th day of June, 2001.

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7 Charles R. Cohen
8 Director of Insurance
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1 **CONSENT TO ORDER**

2 1. Bankers United Life Assurance Company has reviewed the foregoing
3 Order.

4 2. Bankers United Life Assurance Company admits the jurisdiction of the
5 Director of Insurance, State of Arizona, neither admits nor denies the foregoing
6 Findings of Fact, and consents to the entry of the Conclusions of Law and Order.

7 3. Bankers United Life Assurance Company is aware of the right to a hearing,
8 at which it may be represented by counsel, present evidence, and cross-examine
9 witnesses. Bankers United Life Assurance Company irrevocably waives the right to
10 such notice and hearing and to any court appeals related to this Order.

11 4. Bankers United Life Assurance Company states that no promise of any kind
12 or nature whatsoever was made to it to induce it to enter into this Consent Order and
13 that it has entered into this Consent Order voluntarily.

14 5. Bankers United Life Assurance Company acknowledges that the
15 acceptance of this Order by the Director of the Arizona Department of Insurance is
16 solely for the purpose of settling this matter and does not preclude any other agency or
17 officer of this state or its subdivisions or any other person from instituting proceedings,
18 whether civil, criminal, or administrative, as may be appropriate now or in the future.

19 6. Mary J. Tresnak, who holds the office of ^{Assoc. General Counsel}
~~and Vice Pres.-~~ _{Compliance} of Bankers
20 United Life Assurance Company is authorized to enter into this Order for it and on its
21 behalf.

22 **BANKERS UNITED LIFE ASSURANCE COMPANY**

23 June 11, 2001
24 Date

By:



1 **COPY of the foregoing mailed/delivered**

2 **this 19th day of June , 2001, to:**

3 Sara Begley

4 Deputy Director

5 Mary Butterfield

6 Assistant Director

7 Consumer Affairs Division

8 Paul J. Hogan

9 Chief Market Conduct Examiner

10 Market Conduct Examinations Division

11 Deloris E. Williamson

12 Assistant Director

13 Rates & Regulations Division

14 Steve Ferguson

15 Assistant Director

16 Financial Affairs Division

17 Alexandra Shafer

18 Assistant Director

19 Life & Health Division

20 Nancy Howse

21 Chief Financial Examiner

22 Terry L Cooper

23 Fraud Unit Chief

24 DEPARTMENT OF INSURANCE

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